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RICHARD W. WIENING
CLERK
U.S. DISTRICT COURT
DISTRICT OF CALIF.

1 EP
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

RECEIVED

FEB - 8 2008

FELIX TORRES, JR.,

Plaintif,

vs.

UNIVERSITY OF CALIFORNIA,
SANTA CRUZ; UCSC Campus Police;
UCSC Mickey Aluffi, Chief of Police
individually and in official capacity;
UCSC Police Officer M Connor,
individually and in official capacity;
UCSC Animal Control Officer Jen Holz
individually and in official capacity;
UCSC ADA Compliance Officer Susan
Willats, individually and in official
capacity; and DOES 1-10, Inclusive.

Defendants

Case No. 08 00857

COMPLAINT FOR INJUNCTION
AND DECLARATORY RELIEF

JURY DEMAND

HRL

Bw

PLAINTIFF hereby submits his complaint and alleges as follows:

JURISDICTION AND VENUE

1
2 1. This matter arises under the Constitution and laws of the United States,
3 specifically the Fifth and Fourteenth Amendments to the Constitution of the Unites
4 States and 42 USC sections 1983, 1985(3), 1986 and 1988.

5
6 2. This Court has jurisdiction of this case pursuant is 28 USC Section 1343(3), for
7 violation of 1871 Civil Rights Enforcement Act, as amended, including 42 USC
8 section 1983, 1985(3), 1986 and 1988, and sections 1331 and 1367(a). Plaintiff
9 further invokes the pendent jurisdiction of this Court to consider claims arising
10 under state law.
11

12 3. The claims made in this action arose within this judicial district. Venue is
13 proper in this judicial district pursuant to 28 USC 1391(b).
14

PLAINTIFF:

15
16 4. Currently Plaintiff is residing in Santa Cruz, California. Plaintiff is disabled
17 and is receiving Social Security Disability Monthly Income to meet his basic living
18 expenses.
19

20 5. Since 2001, Plaintiff has been periodically traveling throughout California
21 engaging in research at the following UC Campuses, UC Berkeley, UC Santa Cruz,
22 UC Irvine and UC San Diego.
23
24
25

DEFENDANTS:

6. University of California at Santa Cruz is one of UC Campuses of California's Higher Education Systems. It is run by the California Board of Regents and by an appointed Chancellor. UC Santa Cruz has a current enrollment of about 15,000 students.

7. UCSC POLICE DEPARTMENT is a staff of law enforcement officers that ensure a safe environment for UCSC students, staff and visitors. It applies its unit's Mission, Vision and Value statements to the diverse population that they serve. They allege that they recognize and respect the diversity and uniqueness of the citizens of its community, and respond to their needs without bias or prejudice, responding to the ever-changing needs of our community. They allege that they embrace the values of integrity, public service, competence, responsibility and accountability, and maintaining a workplace environment based on mutual respect. Members of this department are expected to adhere to the highest ethical standards of its profession including honesty, loyalty, and responsibility.

Mickey Aluffi, is the Chief of UCSC Police.

8. UCSC Police Officer M. Connor is a current Officer with the UCSC Police Department. Defendant M. Connor is known to violate individual's rights and violate UC Police Policies with impunity.

1 9. UCSC Animal Control Office Jen Holz is a member of the UCSC Police
2 Department and prior to September 2007 approved/or disapproved an individual's
3 request to have the owner's dog on campus upon proof of disability of the
4 individual.

5
6 10. UCSC ADA Compliance Officer Susan Willats is a current employee of the
7 UCSC Campus and administers UCSC ADA requirements and currently approves
8 or disapproves reasonable accommodations for disabled individuals e.g. individual
9 dogs on campus to assist their owners.

10
11 11. UCSC is the only UC Campus that has a UC Dogs Prohibited on Campus
12 Code 55. Which states that it is unlawful for any person having ownership,
13 custody, or control of any dog to cause, suffer or permit such dog to be on the
14 campus of the University of California at Santa Cruz, whether with or without a
15 leash. "Campus" includes all land owned by the University of California at Santa
16 Cruz including the Long Marine Lab, parking lots, grounds, buildings, and all
17 developed and undeveloped lands of the University of California. This section
18 shall not apply to any of the following:
19

- 20
21 (a) Dogs which assist persons with disabilities
22 (b) Dogs which are utilized for campus security
23 (c) Laboratory animals used in education and research
24
25

1 (d) Dogs housed in staff or faculty owned residences, or Chancellor or Provost
2 housing (the "Non-Research Animals on Campus" policy shall regulate these pets).

3 **FACTS OF THE CASE**

4 12. On or about May 27, 2007, Plaintiff was on the UCSC Campus engaged in

5 research via the internet and using the UCSC Library. Plaintiff was parked in a
6 Handicap Parking space exhibiting his California issue Handicap Parking Sticker.

7 13. Plaintiff has been using the UCSC Library facilities off and on since 2003.

8 Plaintiff also has a small dog that assists him in navigating the terrain of the
9 campus e.g. steep rolling hills. Plaintiff was been afflicted with Myasthenia Gravis
10 a serious neurological illness since 1969.

11 14. Prior to May 27, 2007, Plaintiff sought and received permission from UCSC
12 Animal Control Officer Jen Holz to have his dog on campus due to his disability.

13 15. After terminating his use of the UCSC Library, Plaintiff returned to his car and
14 was removing some cardboard from the back seat of his car that Cookie (his dog)
15 had soiled. USCS Police Officer M. Connor witnessed the above and cited
16 Plaintiff for violation of UC Ordinance 55.

17 16. Plaintiff explained to defendant M. Connor that Plaintiff had prior permission
18 to have Cookie on campus. Defendant Connor merely laughed and stated that
19 Plaintiff wasn't really disabled. Defendant M. Connor's behavior and best be
20 described as not only unprofessional but arrogant and at worst unconstitutional.

1 17. In early June 2007, Defendant Jen Holz when contacted by Plaintiff could not
2 remember Plaintiff and indicated that a new procedure was in placed and that
3 Plaintiff needed to contact ADA Compliance Officer defendant Willats.

4 18. Weeks prior to the September 18, 2007 Court hearing on the citation, Plaintiff
5 sought and received permission from defendant UCSC ADA Compliance Officer
6 Susan Willats to have Cookie on campus based on his disability.

7 18. Defendant Willats assured Plaintiff that she would contact defendant Jen Holz
8 and inform her of Plaintiff's permission and to notify all Campus Police of such
9 permission. According to defendant Willats an email was sent that day to
10 defendant Jen Hotz.

11 19. At the September 18, 2007 hearing, under penalty of perjury defendant M.
12 Connor stated that Plaintiff had no such permission. The Court gave Plaintiff a day
13 i.e. September 19, 2007, to confirm his permission to have Cookie on campus via a
14 letter from defendant Susan Willats. Unknown to Plaintiff, defendant Willats was
15 on vacation and would not return until September 24, 2007. Plaintiff was
16 convicted on the violation of UC Ordinance 55 and paid a fine of \$93.00.

17 20. On September 24, 2007, Plaintiff inquired of defendant Susan Willats why UC
18 Campus Police were still unaware of his permission. Defendant Willats stated that
19 permission was granted but now was being revoked. That an email was sent
20

1 regarding the permission but the point was moot now that Plaintiff's permission
2 was being revoked.

3 21. Subsequently, plaintiff informed the Chief of Police of USCS via a formal
4 complaint of defendant M Connor's behavior on the day of the citation and the day
5 of the Court hearing. Plaintiff also formally complained regarding defendant Jen
6 Holz's failure to communicated Plaintiff permission granted by defendant Willats
7 to all UCSC Campus Police Officers prior to September 18, 2007.

8
9 22. As of this day, no formal response has been forthcoming from USCS Police
10 Department regarding Plaintiff's complaint.
11

12
13 **CAUSE OF ACTION ONE**
14 **VIOLATION OF CIVIL RIGHTS**
15 **42 USC 1983**

16 23. Plaintiff incorporates Paragraphs 1-22, as set above and incorporates them by
17 reference.

18 24. Plaintiff alleges that the current scheme as mandated by UC Code 55 is in
19 violation of Plaintiff's US Constitutional Rights as mandated in the 5th (i.e. right
20 to travel ,) , and 14th Amendment (regarding due process and equal protection of
21 laws).
22

23 25. Plaintiff alleges that the defendants are in violation of his Constitutional
24 Rights in violation of USC 1983, as amended in that: Every person who, under
25

1 color of any statute, ordinance, regulation, custom, or usage, of any State or
2 Territory or the District of Columbia, subjects, or causes to be subjected, any
3 citizen of the United States or other person within the jurisdiction thereof to the
4 deprivation of any rights, privileges, or immunities secured by the Constitution and
5 laws, shall be liable to the party injured in an action at law, suit in equity, or other
6 proper proceeding for redress, except that in any action brought against a judicial
7 officer for an act or omission taken in such officer's judicial capacity, injunctive
8 relief shall not be granted unless a declaratory decree was violated or declaratory
9 relief was unavailable. For the purposes of this section, any Act of Congress
10 applicable exclusively to the District of Columbia shall be considered to be a
11 statute of the District of Columbia.

12 26. Defendants by gross negligence, recklessness, or deliberate indifference to the
13 rights of plaintiff caused plaintiff to be unlawfully denied due process and equal
14 protections of the laws of the United States and California State Constitution and
15 Statutes/Codes without a compelling state interest.

16 27. As a direct and proximate result of the actions of the defendants as set forth
17 above, plaintiff suffered the deprivation of Constitutional rights, pain, discomfort,
18 disability, mental and emotion anguish and fear.

1 28. Monetary compensation is not available for the some defendants are immune
2 for damages pursuant to 11TH amendment and immunity doctrines excepting those
3 who are sued in their individual capacities.

4 29. Thus, plaintiffs request that this court issue a temporary and permanent
5 injunction against the defendants from engaging in the above mention scheme and
6 declare that such acts are unconstitutional.
7

8 **CAUSE OF ACTION TWO**
9 **CONSPIRACY TO VIOLATE CIVIL RIGHTS**
10 **42 USC 1985(3)/1986**

11 30. Plaintiff and the class incorporate paragraphs 1-29 as set out above by
12 reference.

13 31. Plaintiff alleges that the current provisions scheme of defendants, as
14 mandated by the defendants in the above mentioned UC 55 code is in violation of
15 Plaintiff's and the Class' US Constitutional Rights as mandated in the 5th and 14th
16 Amendment.
17

18 32. Plaintiff further alleges that the defendants are in violation of his
19 Constitutional Rights in violation of USC 1985(3), as amended in that: two or
20 more persons of the State or Territory of California conspired, for the purpose of
21 depriving, either directly or indirect any person or class of persons of the equal
22 protection of the laws, or of equal privileges and immunities under the laws; or for
23 the purpose of preventing or hindering the constituted authorities of any State or
24
25

1 Territory from giving or securing to all persons within such State or Territory the
2 equal protection of the laws; in any case of conspiracy set forth in this section, if
3 one or more persons engaged therein do, or cause to be done, any act in furtherance
4 of the object of such conspiracy, whereby another is injured in his person or

5 property, or deprived of having and exercising any right or privilege of a citizen of
6 the United States, the party so injured or deprived may have an action for the
7 recovery of damages occasioned by such injury or deprivation, against any one or
8 more of the conspirators.
9

10
11 33. Plaintiff further alleges that the defendants who, having knowledge of the
12 wrongs conspired to be done, and mentioned in section 1985 of this title, are about
13 to be committed, and having power to prevent or aid in preventing the commission
14 of the same, neglected or refuses so to do, that such wrongful act be committed, are
15 to be liable to the party injured, or his legal representatives, for all damages caused
16 by such wrongful act, which such person by reasonable diligence could have
17 prevented; and such damages may be recovered in an action on the case; and any
18 number of persons guilty of such wrongful neglect or refusal may be joined as
19 defendants in the action;
20
21

22 34. Defendants by gross negligence, recklessness, or deliberate indifference to the
23 rights of plaintiff caused plaintiff and the class to be unlawfully denied due process
24
25

1 and equal protections of the laws of the United States and California State
2 Constitution and Statues/Codes without a compelling state interest.

3 35. As a direct and proximate result of the actions of the defendants as set forth
4 above, plaintiff and the class suffered the deprivation of Constitutional rights, pain,
5 discomfort, disability, mental and emotion anguish and fear.

6
7 36. As a result of the foregoing actions of defendants in unlawfully attempting to
8 enforce the provisions of the above cite code, Plaintiff has been denied the exercise
9 of their Fifth Amendment right to travel without due process of law and in
10 violation of the 14th Amendment due process and equal protection of the laws,
11 thereby resulting in a loss of in an amount to be proven at trial. These losses are
12 continuing in nature.
13

14 **CAUSE OF ACTION RE ADA RIGHTS**

15
16 37. Plaintiff incorporates Paragraphs 1-36, as set above and incorporates them by
17 reference.

18 38. Plaintiff alleges that the defendants have violated the ADA in that it prohibits
19 discrimination on the basis of disability in public accommodations i.e. having his
20 dog Cookie on USCS campus.

21
22 39. Plaintiff alleges that he an individual with a disability as defined by the ADA
23 is a person who has a physical or mental impairment that substantially limits one or
24
25

1 more major life activities, a person who has a history or record of such impairment,
2 or a person who is perceived by others as having such impairment.

3 40. Plaintiff alleges that ADA Title II covers all activities of State and local
4 governments regardless of the government entity's size or receipt of Federal

5 funding. Title II requires that State and local governments give people with
6 disabilities an equal opportunity to benefit from all of their programs, services, and
7 activities (e.g. public services such as use of UC Libraries).

8
9 41. Defendants by gross negligence, recklessness, or deliberate indifference to the
10 rights of plaintiff caused plaintiff to be unlawfully denied due process and equal
11 protections of the laws of the United States and California State Constitution and
12 Statutes/Codes without a compelling state interest.

13
14 42. As a direct and proximate result of the actions of the defendants as set forth
15 above, plaintiff suffered the deprivation of Constitutional rights, pain, discomfort,
16 disability, mental and emotion anguish and fear.

17
18 43. Monetary compensation is not available for the some defendants are immune
19 for damages pursuant to 11TH amendment and immunity doctrines excepting those
20 who are sued in their individual capacities.

21
22 44. Thus, plaintiffs request that this court issue a temporary and permanent
23 injunction against the defendants from engaging in the above mention scheme and
24 declare that such acts are unconstitutional.
25

WHEREFORE:

1. Plaintiff requests a jury pursuant to Federal Rules of Civil Procedure 38;
2. Prospective declaratory relief; e.g. (1) entering a judgment pursuant to 28 USC section 2201 declaring the above cited UC 55 Code, unconstitutional on its face or as applied to plaintiff, as violating the Fifth and Fourteenth Amendments to the Constitution of the United States and his ADA rights, and further declaring the code, inapplicable by its own terms to Plaintiffs.
- (2). Enter an Order Pursuant to 28 USC section 2202 based on the entry of the declaratory judgment requested in paragraph (2) above, prohibiting defendants from enforcing the provisions of this code, against Plaintiff.
3. A temporary and permanent injunction against defendants enforcing this code, against Plaintiff and/or acting, directly or indirectly, in their official capacities to harass or retaliate against plaintiff for his challenge to the code or for any other reason.;
4. Enter a judgment, in an amount to be ;proved at trial, in favor of Plaintiff and against individuals acting as state agents in their official and individual capacities; on account of damages sustained by plaintiffs, plus attorneys' fees, interest and costs of this actions;
5. Compensatory damages in the amount proven at trial;
6. Punitive damages in the amount proven at trial.

1 7. Attorneys Fees pursuant to 42 USC section 1988

2 8. And such other and further relief as the court deems just and proper.

3 DATED: JANUARY 16, 2008

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8 FELIX TORRES, JR.
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